

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**JOSEPH GERHART et al**

**PLAINTIFFS**

**v.**

**CAUSE NO. 3:11cv586-HTW-LRA**

**RANKIN COUNTY MISSISSIPPI, et al**

**DEFENDANTS**

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**MOTION TO STRIKE [260] FOURTH AMENDED COMPLAINT**

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**NOW COME** Defendants, Rankin County, Mississippi, former-Sheriff Ronnie Pennington, in his official capacity, and Deputy Brett McAlpin, in his individual and official capacities, (collectively “the Rankin County Defendants”) by and through their counsel of record, and move this Court to strike Plaintiffs’ [260] Fourth Amended Complaint by stating as follows:

1. On November 29, 2016, this Court granted Plaintiffs leave to file their [175-1] proposed Fourth Amended Complaint.

2. On December 1, 2016, Plaintiffs filed a substantial different [206] Fourth Amended Complaint, which changes the factual allegations against the Defendants and the claims against the Defendants.

3. On September 5, 2018, this Court granted the Rankin County Defendants’ [209] Motion to Strike Plaintiffs’ [206] Fourth Amended Complaint in its [258] Order, specifically holding as follows:

IT IS, THEREFORE, ORDERED that the defendants’ Motion to Strike [206] Fourth Amended Complaint [**Docket no. 209**] is hereby **GRANTED** and the Fourth Amended Complaint [**Docket no. 205**] is hereby **STRIKEN**.

IT IS FURTHER ORDERED that plaintiffs may file their Originally Proposed Fourth Amended Complaint [**Docket no. 175-1**], without modification, as a

new amended complaint within five (5) days of the date of the entry of this order. If the plaintiffs fail to do so, then this court will proceed under the Third Amended Complaint as the operative complaint.

*Id.* (emphasis in original).

4. On September 10, 2018, Plaintiffs' filed their [260] Fourth Amended Complaint, which modifies their [175-1] proposed Fourth Amended Complaint by adding 41 pages of exhibits.

5. Because Plaintiffs did not obtain leave of court to file their [260] Fourth Amended Complaint and violated this Court's [258] Order in filing same, the document has no legal effect pursuant to FED. R. CIV. P. 15 and this Court should strike same.

6. Based on the legal precedent and analysis presented in these Defendants' accompanying Memorandum of Authorities, Rankin County, former-Sheriff Ronnie Pennington, in his official capacity, and Deputy Brett McAlpin, in his individual and official capacities, respectfully request that this Court grant their Motion to Strike Plaintiffs' [260] Fourth Amended Complaint and proceed under the Third Amended Complaint as the operative complaint.

7. The Rankin County Defendants rely upon and submit the following items in support of their Motion to Strike:

- a. **Exhibit 1** - [175-1] proposed Fourth Amended Complaint; and
- b. **Exhibit 2** - [260] Fourth Amended Complaint.

**WHEREFORE, PREMISES CONSIDERED,** the Rankin County Defendants respectfully request that this Court strike Plaintiffs' [260] Fourth Amended Complaint and proceed under the Third Amended Complaint as the operative complaint.

**RESPECTFULLY SUBMITTED**, this 20<sup>th</sup> day of September, 2018.

**RANKIN COUNTY, MISSISSIPPI, SHERIFF  
RONNIE PENNINGTON, IN HIS OFFICIAL  
CAPACITY, AND DEPUTY BRETT MCALPIN, IN  
HIS OFFICIAL AND INDIVIDUAL CAPACITIES -  
DEFENDANTS**

**BY:** /s/ Jason E. Dare  
**JASON E. DARE**

**OF COUNSEL:**

Jason E. Dare (MSB No. 100973)  
[jdare@pbhfirm.com](mailto:jdare@pbhfirm.com)  
J. Lawson Hester (MSB No. 2394)  
[lhester@pbhfirm.com](mailto:lhester@pbhfirm.com)  
PETTIS, BARFIELD & HESTER, P.A.  
Post Office Box 16089  
Jackson, Mississippi 39236-6089  
Telephone: (601) 987-5300  
Facsimile: (601) 987-5353

**CERTIFICATE OF SERVICE**

I, JASON E. DARE, hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent a true and correct copy of the pleading to all counsel of record, including the following:

Charles R. McRae, Esq. ([chuck@mcraelaw.net](mailto:chuck@mcraelaw.net))  
CHUCK MCRAE LAW OFFICE  
Jackson, Mississippi

Gary E. Friedman, Esq. ([friedmag@phelps.com](mailto:friedmag@phelps.com))  
Gregory Todd Butler, Esq. ([butlert@phelps.com](mailto:butlert@phelps.com))  
PHELPS DUNBAR, LLP - Jackson  
Jackson, Mississippi

Justin L. Matheny, Esq. ([jmath@ago.state.ms.us](mailto:jmath@ago.state.ms.us))  
Wilson D. Minor, Esq. ([wmينو@ago.state.ms.us](mailto:wmينو@ago.state.ms.us))  
MISSISSIPPI ATTORNEY GENERAL'S OFFICE  
Jackson, Mississippi

**THIS**, the 20<sup>th</sup> day of September, 2018.

/s/ Jason E. Dare  
**JASON E. DARE**